21 C.J.S. Courts § 197

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Courts

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VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

1. General Considerations

§ 197. Retrospective operation—To pending cases

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Courts 100(1)

A court decision generally applies retrospectively to cases that are pending on direct review.

A court decision generally applies retrospectively to cases that are pending on direct review[1] and, unless specifically stated otherwise, to cases awaiting trial.[2] The United States Supreme Court's interpretation of federal civil law must be given full retroactive effect in all cases still open on direct review and as to all events regardless of whether those events predated or postdated the Supreme Court's announcement of the rule.[3] If the Supreme Court does not reserve the question whether its holding should be applied to the parties before it, an opinion announcing a rule of federal law follows the normal rule of retroactive application,[4] and all other courts must apply that rule to pending cases regardless of whether the events at issue occurred before that decision.[5] The United States Supreme Court's determinations pursuant to its supervisory power normally apply, like other judicial decisions, retroactively, at least to the case in which the determination

was made.[6] New legal principles, even when applied retroactively, do not apply to cases that are already closed, however.[7]

Although those responsible for effecting a change in the law should benefit from their efforts,[8] and the general practice is to apply an announced rule in the case before the court,[9] in some circumstances, a court may make a decision purely prospective, in the sense that it does not apply even to the parties in the case in which the decision is announced,[10] or selectively prospective.[11]

A new constitutional rule for the conduct of criminal prosecutions is to be applied retroactively to all state or federal cases that are pending on direct review or not yet final when the rule was announced[12] but does not apply to those cases that have become final before the new rule is announced unless the rule places a class of private conduct beyond the State's power to proscribe or addresses a substantive categorical guarantee accorded by Federal Constitution or is a rule implicating the fundamental fairness and accuracy of the criminal proceeding.[13] Unless they fall within an exception to the general rule, new constitutional rules of criminal procedure will not be applicable, however, to those cases that have become final before the new rules are announced.[14] In the context of retroactivity of a new rule of law to criminal cases that are not yet final, "final" means a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.[15]

CUMULATIVE SUPPLEMENT

Cases:

Under the Supreme Court's *Teague* decision, newly recognized rules of criminal procedure do not normally apply in collateral review, and while *Teague* left open the possibility of an exception for watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the trial, the test is a demanding one, and the test is demanding by design, expressly calibrated to address the reliance interests States have in the finality of their criminal judgments. (Per Justice Gorsuch, with three justices concurring and one justice concurring in the judgment.) Ramos v. Louisiana, 140 S. Ct. 1390 (2020).

Rule announced in Supreme Court's decision in *Dean v. United States*, 137 S. Ct. 1170permitting sentencing courts to consider mandatory minimum sentences for using or possessing firearm in connection with a violent or drug trafficking crime when determining appropriate sentence for other counts of convictiondid not establish watershed rule of criminal procedure, and thus did not

apply retroactively to cases on collateral review. 18 U.S.C.A. § 924(c). Worman v. Entzel, 953 F.3d 1004 (7th Cir. 2020).

New constitutional rule of criminal procedure announced in *United States v. Hills*, 75 M.J. 350, which held that evidence of an accused's commission of a sexual assault to show the accused's propensity to commit charged sexual assault violates an accused's presumption of innocence under Due Process Clause and his right to have all findings made clearly beyond a reasonable doubt, did not fall within the exception from non-retroactivity for watershed rules of criminal procedure that implicate the fundamental fairness and accuracy of a criminal proceeding; the new rule was not inherently necessary to prevent an impermissibly large risk of an inaccurate conviction, and it did not alter understanding of the bedrock procedural elements essential to the fairness of a proceeding. U.S. Const. Amend. 5; Mil. R. Evid. 413. Lewis v. United States, 985 F.3d 1153 (9th Cir. 2021).

Rule under *Pena-Rodriguez v. Colorado* that proof of juror's racial animus created Sixth Amendment exception to no-impeachment rule was not watershed rule of criminal procedure that was implicit in concept of ordered liberty that would satisfy extremely narrow exception to rule under *Teague* that new constitutional rules of criminal procedure will not be applicable to those cases on collateral review that have become final before the new rules are announced. U.S. Const. Amend. 6. Tharpe v. Warden, 898 F.3d 1342 (11th Cir. 2018).

New judicial pronouncement did not retroactively apply to final decisions, even those subject to a collateral attack, such as request to revise final Board or Regional Office decision for clear and unmistakable error (CUE); retroactivity of judicial decisions was limited to pending cases still open to direct review. 38 U.S.C.A. §§ 5109A, 7111; 38 C.F.R. §§ 3.105, 20.1403. George v. McDonough, 991 F.3d 1227 (Fed. Cir. 2021).

Supreme Court's newly-announced rule, that due process did not require a court to inform a defendant pleading guilty of a specific amount of restitution for which defendant could be liable or to cap the amount that could be ordered in plea agreement, was not a watershed rule implicit in concept of ordered liberty, supporting finding that rule did not apply retroactively to cases that were already final when rule was announced; although a defendant's plea was required to be knowing, voluntary, and intelligent, ending the cap requirement did not change understanding of that bedrock principle. U.S. Const. Amend. 14. E.H. v. Slayton in and for County of Coconino, 468 P.3d 1209 (Ariz. 2020).

The *Allen v. Hardy*, 106 S.Ct. 2878, 92 L.Ed.2d 199, framework did not support retroactive application of Supreme Court's newly-announced rule that due process did not require a court to inform a defendant pleading guilty of a specific amount of restitution for which defendant could be liable or to cap the amount that could be ordered in plea agreement; because the restitution caps which had been included in plea agreements were not actually enforceable, retroactive application

of rule was unlikely to threaten the finality of plea agreements. U.S. Const. Amend. 14. E.H. v. Slayton in and for County of Coconino, 468 P.3d 1209 (Ariz. 2020).

A new rule for conducting criminal prosecutions is to be applied to all cases pending on direct review or not yet final. State v. Steinert, 529 P.3d 778 (Kan. 2023).

Supreme Court's interpretation of Minimum Wage Amendment (MWA) to state constitution applied retroactively, where language of MWA was plain, no new principle of law was announced, and resolution could have been foreshadowed. Nev. Const. art. 15, § 16. MDC Restaurants, LLC v. Eighth Judicial District Court of State in and for County of Clark, 383 P.3d 262, 132 Nev. Adv. Op. No. 76 (Nev. 2016).

New rule of constitutional law announced in *Williams v. Pennsylvania*, 136 S.Ct. 1899, that, under Due Process Clause, there was impermissible risk of actual bias when judge earlier had significant, personal involvement as prosecutor in critical decision regarding petitioner's criminal case, was procedural, and not substantive rule, and thus did not apply retroactively on postconviction review to defendant's claim of alleged due process violation, based on Pennsylvania Supreme Court judge's failure to recuse himself from hearing appeal from denial of initial postconviction petition, due to his involvement in defendant's capital murder case, as then-district attorney, by approving prosecutor's request to seek death penalty; *Williams* did not prevent Commonwealth from prohibiting particular conduct or deem any conduct constitutionally protected, or place any class of persons or punishments off limits, but articulated manner in which recusal decisions had to be made and appellate review was to be conducted. U.S. Const. Amend. 14. Commonwealth v. Reid, 235 A.3d 1124 (Pa. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993).

Kan.—Stechschulte v. Jennings, 297 Kan. 2, 298 P.3d 1083 (2013).

N.Y.—People v. Lewis, 23 N.Y.3d 179, 989 N.Y.S.2d 661, 12 N.E.3d 1091 (2014).

Vt.—State v. Gibney, 177 Vt. 633, 2005 VT 3, 869 A.2d 118 (2005).

2 Miss.—Brown v. Southwest Mississippi Regional Medical Center, 989 So. 2d 933 (Miss. Ct. App. 2008).

3 U.S.—NeuroRepair, Inc. v. The Nath Law Group, 781 F.3d 1340 (Fed. Cir. 2015).

4 U.S.—Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993).

5 U.S.—Reynoldsville Casket Co. v. Hyde, 514 U.S. 749, 115 S. Ct. 1745, 131 L. Ed. 2d 820 (1995).

6 U.S.—Castro v. U.S., 540 U.S. 375, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003).

7 U.S.—Reynoldsville Casket Co. v. Hyde, 514 U.S. 749, 115 S. Ct. 1745, 131 L. Ed. 2d 820 (1995).

Mich.—People v. Maxson, 482 Mich. 385, 759 N.W.2d 817 (2008).

N.H.—Petition of State, 166 N.H. 659, 103 A.3d 227 (2014) (constitutional rules of criminal procedure).

8 N.J.—Rutherford Educ. Ass'n v. Board of Educ. of Borough of Rutherford, Bergen County, 99 N.J. 8, 489 A.2d 1148, 24 Ed. Law Rep. 278 (1985).

Wash.—Lau v. Nelson, 92 Wash. 2d 823, 601 P.2d 527 (1979).

9 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

10 Alaska—Alaskan Village, Inc. v. Smalley, for and on Behalf of Smalley, 720 P.2d 945 (Alaska 1986).

Ga.—Findley v. Findley, 280 Ga. 454, 629 S.E.2d 222 (2006).

Wash.—Lau v. Nelson, 92 Wash. 2d 823, 601 P.2d 527 (1979).

11 Ga.—Findley v. Findley, 280 Ga. 454, 629 S.E.2d 222 (2006).

12 U.S.—Davis v. U.S., 564 U.S. 229, 131 S. Ct. 2419, 180 L. Ed. 2d 285, 68 A.L.R. Fed. 2d 665 (2011); Powell v. Nevada, 511 U.S. 79, 114 S. Ct. 1280, 128 L. Ed. 2d 1 (1994).

Ill.—People v. Bew, 228 Ill. 2d 122, 319 Ill. Dec. 878, 886 N.E.2d 1002 (2008).

Md.—Kelly v. State, 436 Md. 406, 82 A.3d 205 (2013), cert. denied, 135 S. Ct. 401, 190 L. Ed. 2d 289 (2014).

Minn.—Chambers v. State, 831 N.W.2d 311 (Minn. 2013).

Wash.—State v. Louthan, 175 Wash. 2d 751, 287 P.3d 8 (2012).

13 U.S.—Schriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004); Horn v. Banks, 536 U.S. 266, 122 S. Ct. 2147, 153 L. Ed. 2d 301 (2002).

Whether new rules apply retroactively in habeas corpus proceedings, see C.J.S., Habeas Corpus § 84.

14 U.S.—U.S. v. Olvera, 775 F.3d 726 (5th Cir. 2015).

Habeas proceeding

The United States Supreme Court's *Crawford* decision, in expressly overruling a prior Supreme Court holding that governed the admission of hearsay statements in criminal trials over a Confrontation Clause objection, plainly announced a "new rule" of procedural law, that could not be applied in a habeas proceeding commenced by a defendant whose conviction was already final on direct review, unless it was a watershed rule of criminal procedure implicating fundamental fairness and the accuracy of criminal proceeding.

U.S.—Whorton v. Bockting, 549 U.S. 406, 127 S. Ct. 1173, 167 L. Ed. 2d 1, 72 Fed. R. Evid. Serv. 635, 44 A.L.R. Fed. 2d 777 (2007).

15 Wis.—State v. Kennedy, 2014 WI 132, 359 Wis. 2d 454, 856 N.W.2d 834 (2014).

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